

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 WEDNESDAY, JUNE 23, 2021

9:26 A.M.

16 LOS ANGELES, CALIFORNIA

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1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JUNE 23, 2021

2 9:26 A.M.

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4 THE CLERK: Calling CR 17-0404, United States of
5 America versus Arlan Wesley Harrell.

6 Counsel, please state your appearances, beginning
7 with the government.

8 MS. MYERS: Good morning, Your Honor.

9 Devon Myers on behalf of the United States. With
10 me at virtual counsel table is Assistant United States
11 Attorney Kim Meyer and CEOS DOJ trial attorneys
12 Kyle Reynolds and Lauren Kupersmith.

13 THE COURT: Good morning. I don't see
14 Ms. Kupersmith. Is she on the phone?

15 MS. MYERS: Yes, Your Honor, I believe that's
16 right.

17 THE COURT: Ms. Kupersmith, can you hear us?

18 (Brief pause in the proceedings.)

19 THE COURT: I just want to make sure she's hearing
20 all this.

21 Ms. Kupersmith, can you hear us? If you can hear
22 us, try hitting pound 6 on your phone.

23 (Brief pause in the proceedings.)

24 THE COURT: Ms. Myers, let me ask by any chance do
25 you know the last three numbers of her phone number? Is it

1 0002? I am looking on our Zoom screen to see if she is
2 connected with us.

3 MS. MYERS: Let me look it up, Your Honor, please.
4 I think her last four are either 1564 or 0845.

5 THE COURT: Okay.

6 MS. SAVO: It actually looks to me, Your Honor,
7 like that 3002 number lights up when you speak.

8 THE COURT: Okay. You are right. Sorry. But I
9 do see an 845, but it's -- at least it's muted.

10 Again, Ms. Kupersmith, if you can hear us, if you
11 can press star 6, I think that might resolve the issue
12 hopefully.

13 MS. KUPERSMITH: Thank you, Your Honor. I was
14 able to do that now.

15 THE COURT: Okay. Great. I just want to make
16 sure you were on.

17 MS. KUPERSMITH: My apologies. I am having some
18 issues with the Zoom feed.

19 THE COURT: All right. Well, good afternoon, I
20 think, for you. Or I think it's afternoon there. All
21 right.

22 And for the defense, Ms. Savo.

23 MS. SAVO: Good morning, Your Honor.

24 Kim Savo from the Federal Public Defender on
25 behalf of Mr. Harrell. We are both appearing by

1 videoconferencing technology.

2 THE COURT: All right. Good afternoon to you
3 both.

4 Mr. Harrell, I just want to make sure. Are you
5 okay with us proceeding via videoconference today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Great.

8 Ms. Savo, do you want to sort of inform us where
9 are we, from your perspective?

10 MS. SAVO: Sure. I have been able to meet with
11 Mr. Harrell since the last status conference. And having
12 conferred with my supervisor and management, we think that
13 it's probably not wise for me to be the person who concludes
14 whether Mr. Harrell is in the right frame of mind to proceed
15 with a change of plea. So I am going to ask for a brief
16 continuance of the trial date.

17 I want to be clear. I have absolutely no reason
18 to believe that this case is going to proceed to trial based
19 on my communications with Mr. Harrell, but I think it would
20 be wise for us to continue it for a brief period of time to
21 mid-September to give me time to have someone, a
22 professional, meet with him.

23 I just really want to assure that what we have is
24 a voluntary and knowing plea. And I don't want to push
25 anything given the circumstances. I just don't want to be a

1 contributing factor.

2 THE COURT: Right. So I just want to make sure I
3 understand. I appreciate the sensitivities as it relates to
4 this. Were you going to hire an expert or use the resources
5 that you have within your office?

6 MS. SAVO: My hope is that I can use the PsyD that
7 we have on staff to meet with him. If that's not possible,
8 then I will hire someone, but that, I am trying to be
9 expeditious.

10 THE COURT: Thank you, Ms. Savo.

11 What's the government's position? Who has drawn
12 the short straw for the government today?

13 Is it Ms. Myers?

14 MS. MYERS: Yes, Your Honor. I think that's me.
15 Never a short straw when I'm in your Court, Your Honor.

16 THE COURT: Spoken like a true prosecutor. All
17 right. Currying favor with the Court. Go ahead.

18 MS. MYERS: Now I take it back.

19 Our concern -- I understand Ms. Savo's position.
20 I think our concern, Your Honor, is that we still have two
21 defendants in the case.

22 So I don't think we can move anything when we only
23 have one defendant here. So we'd have to engage with both
24 defendants to figure out what that is.

25 And, of course, the countervailing concern here is

1 the victims. We have a lot of victims in this case that
2 have been waiting very, very patiently for this case to get
3 resolved.

4 So any continuance is just one more hardship on
5 them, Your Honor, which the government is very mindful of
6 and, of course, they do have statutory rights to a speedy
7 trial as well.

8 THE COURT: Right.

9 MS. MYERS: I'm not saying we're opposing it. I
10 am just saying we do have some countervailing concerns here,
11 Your Honor.

12 THE COURT: I understand that. Look. Both --
13 there are issues on both sides of this coin. The concern
14 the Court has, though, is if in fact Mr. Harrell wants to
15 change his plea in light of what has happened in this case,
16 I think it's in everyone's interest to ensure that we have
17 done what we can to at least satisfy any concerns that this
18 is a knowing, intelligent, and voluntary plea. I think any
19 efforts we try to do to accomplish that would be helpful.

20 So I guess, Ms. Savo, how do you propose we deal
21 with this in light of the fact that we have a co-defendant,
22 we have a status conference set for July 23rd already?

23 Is that realistic as far as your ability to meet
24 with someone in your staff and/or try to at least retain an
25 expert, if necessary, to meet with Mr. Harrell?

1 I don't know what the situation is at Santa Ana
2 and everyone else's sort of personal schedules. I would
3 like to get your thoughts.

4 MS. SAVO: You know, my goal was to try and make
5 this happen within the next two weeks would be my goal and
6 my preference.

7 THE COURT: Right.

8 MS. SAVO: I --

9 THE COURT: Ms. Savo, I am sorry to interrupt you.
10 I don't want you or your client, Mr. Harrell, to think that
11 I am trying to pressure you in any way. Look. This case
12 has had a lot of ups, and downs and so I want to make sure
13 we do it right. I only ask because I know we have that
14 status conference.

15 MS. SAVO: I understand. And what I would say is
16 that I don't think that the Court is pressuring us. I think
17 the Court is trying to weigh and balance concerns.

18 I don't know what's going to happen with the
19 co-defendant or whatever is happening over there.

20 What I can say is that I -- we discussed earlier
21 many, many, many months ago, when we were talking about this
22 case proceeding to trial before Mr. Harrell had any medical
23 issues, that we would waive jury and proceed by way of a
24 bench trial at a time when I had no concerns about his
25 mental state.

1 I can't put the status, the procedural status,
2 with respect to the co-defendant above what's going on for
3 my client.

4 My feeling is the Court could move Mr. Harrell's
5 trial and Brinson can figure out whatever Brinson is doing
6 because I just don't think that this case is going to
7 proceed to trial.

8 And in the event that it did, which I just think
9 is a negligible reality, would likely be a bench trial in
10 any event which I think would make scheduling far easier.

11 So I suppose government counsel can make an effort
12 to reach out to Brinson's counsel and see whether or not he
13 would be amenable to a brief continuance, and that would be
14 the cleanest thing to do, and in the meantime I will do my
15 best to try and get Mr. Harrell seen in the next couple
16 weeks.

17 THE COURT: All right. I appreciate it. So look.
18 Let's do this: We have the status conference set for
19 July 23rd. Let's keep that date.

20 Ms. Savo, do what you can, and we'll get an update
21 from you at that point.

22 Ms. Myers, similar. Do what you can in the next
23 couple weeks as it relates to the co-defendant in this case.
24 I don't know if you have had any conversations with
25 Mr. Nicolaysen since our last meeting, but perhaps it may be

1 worth reaching out to ascertain sort of his timing.

2 And may I ask have you had any conversation with
3 Mr. Nicolaysen since -- did we meet just yesterday, or was
4 it the day before -- days are blending. My apologies.

5 MS. MYERS: It was Monday, Your Honor. It was two
6 days ago.

7 I have not had a chance to speak with
8 Mr. Nicolaysen. I believe he starts a state court trial
9 today. However, he did e-mail, and he -- we are trying to
10 work out a stipulated factual basis and he -- I need to
11 double-check the Court's dates because my notes show that
12 you are out from July 6th until July 19th. But we were
13 going to try and set a status conference with Defendant
14 Brinson on July 6th. Is the Court available or unavailable
15 that day?

16 THE COURT: Let's see. July the 6th. I could do
17 it maybe -- I could do it, but it would have to be in the
18 afternoon. If the parties -- if the parties feel that it's
19 necessary, I could do it in the afternoon.

20 MS. MYERS: Okay. My understanding is that
21 Mr. Nicolaysen has a conflict where he would request that
22 the hearing be via VTC that day, but I don't know that we
23 were contemplating it be in the afternoon, but I can check
24 with him.

25 THE COURT: Was July 6th -- I am just curious.

1 Did you pick that date -- was that a date that you picked
2 that was best for both counsel? Because I could do it on
3 the 7th as well.

4 MS. MYERS: I don't know that I was aware that you
5 were in on the 7th, Your Honor. So I think we were picking
6 that as the last date that we believed the Court was
7 available but after Mr. Nicolaysen's trial is scheduled to
8 be finished so he could meet with his client.

9 THE COURT: Just so you know, I can do it on the
10 6th or the 7th in the afternoon.

11 MS. MYERS: I will just relay that to
12 Mr. Nicolaysen.

13 Do you think -- this is the question for Ms. Savo.
14 Do you think it would be worth us doing two sort of
15 back-to-back status conferences on the 6th or 7th, one with
16 each defendant so that we can -- again, Your Honor, I
17 recognize that all signs are that we're probably not going
18 to go to trial on August 3rd, but we do have a trial date.
19 And even if it's a bench trial, you know, there is a lot of
20 work from the government's side to go into it.

21 THE COURT: Let me do this. Given what's going on
22 from -- with Mr. Harrell, I would prefer if in fact we can
23 get something, a hearing on Brinson on July 6th or 7th,
24 let's do that, give Ms. Savo some time to figure out the
25 issues on her end. We'll have it set for the 23rd, and

1 we'll see what happens.

2 And if we're going to have a bench trial, again, I
3 think you all know most of the time I'm fairly reasonable.
4 If we need to move the dates for the trial -- if it's going
5 to be a bench trial, then we'll figure that out, I mean
6 assuming we're not coming up on any T Max issues. But if
7 it's going to be a bench trial, I think it gives us a little
8 more flexibility.

9 My proposal is, if in fact you and Mr. Nicolaysen
10 can agree on a date, whether it's the 6th or 7th, let the
11 Court know, we'll set a hearing.

12 We'll keep Mr. Harrell's status conference on
13 July 23rd because that will give about a month, and I
14 think -- I mean, Ms. Savo has a lot on her plate. This is a
15 serious issue.

16 I want to make sure she does everything that she
17 needs to do and exercise her due diligence to ascertain
18 where Mr. Harrell stands on this case. And I think giving
19 her that time is necessary and appropriate.

20 So that's what I intend to do.

21 So, Ms. Myers, if you wouldn't mind, do what you
22 can to talk with Mr. Nicolaysen -- I'm sorry, Ms. Savo.

23 MS. SAVO: I just wanted to say two things, first
24 for scheduling purposes. I would be available -- should we
25 be able to on either the 6th or the 7th. I already have an

1 appearance before Your Honor on the 7th at 10:00 A.M.

2 And then just to make things very complicated, I
3 wondered if there is any possibility that, if you want to
4 leave a status conference like a pretrial conference on
5 calendar, if we could move it from the 23rd to the 22nd.

6 If it's totally inconvenient for everybody else, I
7 will make it work. But it would be much better for me if we
8 could do it on the 22nd rather than the 23rd.

9 THE COURT: Just one moment, please. Let me see
10 if we can move heaven and earth for you.

11 MS. SAVO: I don't want you to.

12 THE COURT: I am teasing you. I am teasing you.

13 MS. SAVO: That's okay.

14 THE COURT: Right. On the -- if we want to do it
15 on the 22nd, I mean, it's going to be a Zoom hearing.
16 Right? Or you don't know?

17 MS. SAVO: Do we know if the CARES Act -- I don't
18 know what's happening with the CARES Act. Do you?

19 THE COURT: My point is assuming the CARES Act is
20 still in effect. We've had all of these hearings up to date
21 via Zoom. I am assuming, for lack of a better term, the
22 default would be a Zoom hearing.

23 So why don't we do this: Find out what -- do what
24 you need to do. And if you think, hey, I have some
25 information that is going to be -- I need to share with the

1 Court, let's do it on the 22nd, and we'll accommodate you.

2 Okay? Just e-mail my courtroom deputy, and we'll make it
3 happen.

4 MS. SAVO: Just to be clear, my goal is to let
5 everybody know way before then, if at all possible.

6 THE COURT: Right. So, again, I don't know if
7 there is a need, unless you insist. I don't know if there
8 is a need for you to be at the hearing if there is one with
9 Mr. Nicolaysen's client in early July.

10 MS. SAVO: No. I was just saying, if it turned
11 out that Mr. Harrell could enter a plea and everybody wanted
12 to do it at the same time on those dates, I was just letting
13 you know --

14 THE COURT: If the timing works out, we're here.
15 But again, I don't want to put any pressure on you as it
16 relates to that issue.

17 And I know there are, I believe, there are people
18 that are listening in on the call. I just hope that they
19 can understand that it is vitally important that decisions
20 that get made in this case from a legal perspective have to
21 be knowing, intelligent, and voluntary.

22 I recognize there are sensitivities from the
23 victims in trying to get a resolution, but my fear and
24 concern is that I would hate for the victims to have to go
25 through this and believe they are getting a resolution only

1 to have this come back years from now because there was a
2 question about whether a decision was made knowingly,
3 voluntarily, and intelligently. That's why I am trying to
4 be very cautious on both ends to ensure that we do this the
5 right way one time.

6 All right. So we'll keep the July 23rd date.
7 Until and unless Ms. Savo indicates that she needs an
8 earlier date and if she needs July 22nd, we'll accommodate
9 her.

10 Ms. Myers, if you get any more information about
11 July 6th or 7th status conference, e-mail our courtroom
12 deputy. She's the traffic controller. She'll make sure we
13 get a hearing on calendar. All right?

14 MS. MYERS: Yes, Your Honor. Do you mind if I
15 just confirm? So the hearing on the 23rd is going to stay
16 on the 23rd, but if Ms. Savo -- if we don't do something
17 with Defendant Harrell in early July, then we'll probably
18 move the status conference on the 23rd to the 22nd. Is that
19 correct, Your Honor?

20 THE COURT: That sounds right, yes.

21 MS. MYERS: All right. Thank you, Your Honor.

22 THE COURT: Anything further from the government?

23 MS. MYERS: I don't believe so.

24 THE COURT: Okay. Ms. Savo, anything further?

25 MS. SAVO: No. Thank you. As I said, I -- my

1 goal is to keep everyone informed as I get information. I
2 will not wait until the end of July to let you know what is
3 going on.

4 THE COURT: Thank you. I appreciate that.

5 Everyone stay safe and healthy, and we'll see each
6 other soon. That concludes this hearing.

7 I'm sorry, Ms. Myers.

8 MS. MYERS: Sorry. One more question, Your Honor.
9 I don't know that Ms. Savo knows the date that the Court is
10 dark in July.

11 THE COURT: To the extent you didn't know,
12 Ms. Savo, the Court is going to be dark July the 9th through
13 the -- July 8th through the 16th. And I need to keep those
14 dates available unless you all want to pay for my divorce
15 lawyer. All right?

16 MS. SAVO: I understand.

17 THE COURT: Okay. Well, that concludes this
18 hearing. Stay safe and healthy, everyone. Thank you.

19 (Proceedings concluded at 9:47 a.m.)

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1 CERTIFICATE
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4 I hereby certify that pursuant to Section 753,
5 Title 28, United States Code, the foregoing is a true and
6 correct transcript of the stenographically reported
7 proceedings held in the above-entitled matter and that the
8 transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10 Date: May 23, 2022.

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14 /S/ CHIA MEI JUI

15 Chia Mei Jui, CSR No. 3287
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